

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raw Bandwidth Communications, Inc.,

Complainant,

vs.

SBC California, Inc. (U-1001-C) and SBC
Advanced Solutions, Inc. (U-6346-C),

Defendants.

Case 03-05-023
(Filed May 15, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING DISCOVERY DISPUTES AND
REVISING TESTIMONY AND HEARING DATES**

This ruling addresses discovery disputes raised by Raw Bandwidth Communications, Inc. (Raw Bandwidth), following the February 3, 2006 conference call and February 17, 2006 ruling setting the schedule for discovery and hearings, and revises testimony and hearing dates.

Background

D.05-05-049 reopened this proceeding to consider the advance notice issue. A prehearing conference (PHC) was held on July 6, 2005. Following the PHC, the parties participated in Commission-sponsored mediation. As a result of the mediation, Defendants Pacific Bell Telephone Company (SBC California now AT&T California) and SBC Advanced Solutions, Inc. (now AT&T Advanced Solutions, Inc.) offered the use of AT&T's third party notice, which permits

customers to designate a third party to receive disconnection notification at the same time the customer receives that notification, to resolve the advance notice issue. Raw Bandwidth does not favor the use of third party notice.

The parties have expressed concerns about the scope of this phase of the proceeding and discovery disputes. Below, I provide a chronological history of the parties concerns and my responses.

Following the February 17, 2006 ruling, Raw Bandwidth expressed concerns in a March 9, 2006 e-mail that the ruling limited the proposals that Raw Bandwidth could advance. I responded by e-mail on March 9 that Raw Bandwidth was not foreclosed from offering its advance notices proposals in hearings and testimony. On March 13, 2006, Defendants objected in an e-mail to Raw Bandwidth's proposal to keep the notice the same as repackaging causes of action that were not remanded to this phase of the proceeding. On March 14, 2006, I responded by e-mail that this phase of the proceeding was limited to disconnections for nonpayment and that the interval for reconnecting DSL Transport after disconnection is not at issue.

On March 14, 2006, Raw Bandwidth sent an e-mail addressing a discovery dispute. At issue were a series of data requests asking about problems an end user of DSL service might suffer if the DSL Transport Service is disconnected and then later reconnected. Raw Bandwidth noted that it anticipated the parties informal resolution of the discovery disputes were not likely to be successful and that the parties soon would request a conference call to discuss specific data requests and responses. I responded on March 15, 2006 that my initial impression was that the consequences of the disconnection of DSL Transport Service resulting from nonpayment by a voice customer is not an issue the Commission needed to resolve in this phase of the proceeding. Additionally,

what Defendants believed an end user, specifically Raw Bandwidth's customer, would suffer in light of disconnection would have little probative value.

On April 3 and 4, 2006, Raw Bandwidth sent two e-mails that stated the parties had reached a discovery impasse after "meeting and conferring" by e-mail. Defendants objected to use of e-mails to address discovery disputes and requested an opportunity to respond to Raw Bandwidth's statements concerning the discovery disputes. In light of the due date for opening testimony, a little over a week away, I offered some general guidance by e-mail on April 5, 2006 and noted that the offered guidance would be incorporated in a ruling and the parties would be permitted further input, if requested. Defendants requested the opportunity to respond by April 10, 2006. I granted that request and AT&T and AT&T ASI submitted separate responses on April 10, 2006. Raw Bandwidth sent four e-mails between April 7 and 11, 2006 in response to my guidelines and to Defendants responses.

On April 12, 2006, Raw Bandwidth requested by e-mail a delay in the hearing schedule. Defendants agreed by e-mail on April 12 to a one-week delay in testimony and hearings and noted their availability on May 17, 18, and 19, 2006. In an April 13, 2006 e-mail, Raw Bandwidth stated a one-week extension might not be sufficient, a conference call would be necessary to resolve the remaining discovery dispute, and more than one day of hearings might be needed.

Discovery Dispute

The Commission is considering revisions to its rules of practice and procedure. The general rule for discovery, although not yet adopted by the Commission, provides a balancing test. (*See* Rulemaking 06-02-011, new Rule 10.1). Matter that is relevant to the subject matter of the proceeding and is

either admissible or calculated to lead to the admissible evidence is discoverable unless the burden, expense, or intrusiveness of that discovery outweighs the likelihood that it will lead to admissible evidence. In this phase of the proceeding, discovery is limited to the parties' proposals for advance notice.

On April 5, 2006, I broadly addressed discovery guidelines, as follows. The Commission broadly construes relevance in admitting evidence in Commission proceedings. Raw Bandwidth should be permitted discovery sufficient to provide as much detail concerning its proposals as Defendants will provide with respect to their third party notice proposal. I do not anticipate Defendants will provide detailed cost information concerning their proposal. Therefore, Raw Bandwidth's discovery of cost information should be narrow.

Raw Bandwidth should be permitted discovery sufficient to describe what would happen if the Commission adopted its proposals. Raw Bandwidth already has information to permit it to testify what happens currently when Defendants disconnect DSL Transport for nonpayment of the voice subscriber's voice service. Raw Bandwidth should be permitted discovery sufficient to provide additional detail concerning what occurs with respect to that disconnection and concerning whether it is standard practice. Discovery that seeks detail concerning all ISPs and disconnection procedures involving those ISPs only would be relevant if there were no standard procedure.

The parties have stated that Defendants do not offer standalone DSL to ISPs, and Raw Bandwidth has said that the offering of standalone DSL would not resolve the issues in this proceeding. Raw Bandwidth should be permitted narrow discovery concerning whether the standalone DSL, if any, provided to data CLECs could be adapted to provide advance notice to Raw Bandwidth. The UCAN complaint case is not relevant to this proceeding. However, Raw

Bandwidth should be permitted discovery sufficient to establish whether Defendants' provision of warm dial tone after disconnection of a voice subscriber's voice service, if warm dial tone is provided, could permit advance notice to Raw Bandwidth of the disconnection of DSL Transport.

Raw Bandwidth states these guidelines have not resolved the discovery dispute. I will briefly address the areas of discovery/data requests Raw Bandwidth states are in dispute.

Cost Information: Raw Bandwidth states it needs detailed programming and database changes plus cost information for one of its proposals, advance notice when a voice line is suspended for nonpayment. Defendants state they have provided diagrams showing changes in system flow and cost approximations. This is the same level of detail Defendants will present concerning their proposal. Defendants agreed to supplement the information provided with additional overview information about its processes. With this supplementation Defendants response is sufficient.

Third Set of Data Requests to ASI: Raw Bandwidth states it needs to know what is happening in Defendants' systems during and up to the time the line is permanently disconnected so that Raw Bandwidth can describe the changes necessary to make current notice of disconnection workable. ASI objects to providing detail on the procedures used to reestablish DSL Transport service and the timing, etc. because they are beyond the issues in the proceeding. ASI shall respond whether the instructions to ISPs following line loss notification differ from the instructions given to Raw Bandwidth. If the instructions differ, ASI shall answer Request 3.

Fourth Set of Data Requests to ASI: Raw Bandwidth states it needs to know what is happening in Defendants' systems during and up to the time the

line is permanently disconnected so that Raw Bandwidth can describe the changes necessary to make current notice of disconnection workable. ASI states it has not provided the writings provided to ISPs and maintenance technicians. If the instructions to ISPs differ from instructions provided to Raw Bandwidth, ASI shall provide a set of those writings. Producing the other writings would be burdensome when balanced with Raw Bandwidth's desire to provide specificity with respect to one advance notice proposal.

Fifth Set of Data Requests to ASI: Raw Bandwidth states it needs to know what is happening in Defendants' systems during and up to the time the line is permanently disconnected so that Raw Bandwidth can describe the changes necessary to make current notice of disconnection workable. ASI states that information concerning why ASI requires ISPs to order new DSL Transport service following line loss notification is irrelevant. The disputed data request is irrelevant, and ASI need not respond.

Seventh Set of Data Requests to AT&T: Raw Bandwidth wants AT&T to admit that the procedure described in a response to a data request violates Pub. Util. Code § 2883. Raw Bandwidth needs this information for impeachment purposes and to develop a proposal, should AT&T change this procedure. AT&T states warm line is not provided, so further information on the issue would not assist Raw Bandwidth in developing an advance notice proposal. The request for admission will not lead to admissible evidence, and AT&T need not respond to the request.

Eighth Set of Data Requests to AT&T: Raw Bandwidth states that the request for procedures for data CLECs and standalone DSL is relevant because it would demonstrate AT&T could leave DSL working after disconnection of a voice line. AT&T states that warm line is not an issue in this proceeding. AT&T

shall describe and provide writings that describe the provision of a warm line to a data CLEC. The general information will assist Raw Bandwidth in developing its proposal. AT&T need not provide the additional detail requested; the burden on producing this information outweighs Raw Bandwidth's need for it. Raw Bandwidth requests that AT&T admit inconsistencies in data request responses in this proceeding and the UCAN complaint case. AT&T notes the warm line issue has been dismissed from the UCAN case. The UCAN complaint case is not and AT&T need not respond to the request for admission.

I have no record of receiving a third e-mail concerning the discovery disputes from Raw Bandwidth. AT&T responds to that third e-mail and characterizes it as addressing discovery disputes that require AT&T to do manual work to mine data on suspensions for nonpayment that AT&T does not track. AT&T agrees, however, to supplement an earlier data request response to provide the information it does track. As general guidance, requiring a manual search for information that is not tracked by AT&T is burdensome. AT&T further states it is looking for scripts of calls to subscribers whose service is in danger of disruption and that it cannot produce additional information because it does not have it. Delaying the time for serving testimony should permit AT&T to find the scripts. They are relevant to the advance notice proposal.

Schedule

The parties have requested and I will grant a delay in the schedule for testimony and hearings. The new schedule is:

Date	Event
Monday, April 24, 2006	Parties serve opening testimony
Monday May 8, 2006	Parties serve reply testimony
Thursday, May 18, 2006, at 9:30 a.m. in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA	Evidentiary hearings

I will not schedule an additional day of hearings at this time.

IT IS RULED that:

1. Pacific Bell Telephone Company (AT&T California) and SBC Advanced Solutions, Inc. (AT&T Advanced Solutions, Inc.) shall provide additional discovery to Raw Bandwidth Communications, as set forth herein.
2. The schedule for testimony and hearings is revised, as set forth herein.

Dated April 14, 2006, at San Francisco, California.

/s/ JANICE GRAU

Janice Grau

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Discovery Disputes and Revising Testimony and Hearing Dates on all parties of record in this proceeding or their attorneys of record.

Dated April 14, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

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TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.